

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
Case No. 2:03CV0294DAK

THE SCO GROUP,

Plaintiff,

vs

INTERNATIONAL BUSINESS
MACHINES CORPORATION,
Defendant.

VIDEO DEPOSITION UNDER ORAL EXAMINATION OF
GEOFFREY GREEN

DATE: November 15, 2004

REPORTED BY: CHARLENE FRIEDMAN, CSR, RPR, CRR

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G. Green

<p style="text-align: right;">110</p> <p>1 MR. ESKOVITZ: I'm talking about</p> <p>2 AT&T's intent with respect to paragraph</p> <p>3 1.04.</p> <p>4 A 1.04 was focusing on what was</p> <p>5 actually to be physically sent to the</p> <p>6 licensee, and so that -- physical items</p> <p>7 included the software itself and various</p> <p>8 documents.</p> <p>9 Q Okay. Your understanding of what</p> <p>10 software product meant was it was just the</p> <p>11 actual physical items that were being given</p> <p>12 to the licensee?</p> <p>13 A Yes.</p> <p>14 Q Okay. Is the definition of -- let</p> <p>15 me just refer you down to 2.01, for example,</p> <p>16 the first sentence of 2.01 where the</p> <p>17 capitalized term software product is used.</p> <p>18 That's the same -- software product means the</p> <p>19 same thing in 2.01, for example, as it does</p> <p>20 in 1.04; is that right?</p> <p>21 A Yes.</p> <p>22 Q Okay. Let's take 2.01. It says,</p> <p>23 "AT&T grants to licensee a personal</p> <p>24 non-transferrable and non-exclusive right to</p> <p>25 use in the United States each software</p>	<p style="text-align: right;">112</p> <p>1 and the fees for use of the software were</p> <p>2 based on how many designated CPU's there</p> <p>3 were.</p> <p>4 Q So one of the reasons, at least,</p> <p>5 one of the important reasons was to ensure</p> <p>6 that AT&T was paid for the licensee's full</p> <p>7 use of the licensed product?</p> <p>8 MR KAO: Objection to the form.</p> <p>9 A Yes.</p> <p>10 Q The next sentence of 2.01 says</p> <p>11 that, "Such right to use includes the right</p> <p>12 to modify such software product and to</p> <p>13 prepare derivative works based on such</p> <p>14 software product."</p> <p>15 What was the intent, AT&T's intent,</p> <p>16 with respect to that provision?</p> <p>17 MR FELTOON: To the portion that</p> <p>18 you read?</p> <p>19 MR ESKOVITZ: Yes.</p> <p>20 A I think just what it says, that the</p> <p>21 licensee could modify the product and prepare</p> <p>22 works based on the product.</p> <p>23 Q And what is your understanding or</p> <p>24 what was AT&T's intent -- strike that.</p> <p>25 What was AT&T's intent with respect</p>
<p style="text-align: right;">111</p> <p>1 product identified in the one or more</p> <p>2 supplements hereto, solely for licensee's own</p> <p>3 internal business purposes and solely on or</p> <p>4 in conjunction with designated CPU's for such</p> <p>5 software product."</p> <p>6 What was AT&T's intent with respect</p> <p>7 to the requirement that licensees only use</p> <p>8 software products for their own internal</p> <p>9 business purposes?</p> <p>10 A The intent was that the use of</p> <p>11 would be for the licensee's own business</p> <p>12 needs and not to provide some kind of service</p> <p>13 for other people on the licensee's computers.</p> <p>14 Q Okay. Is that one of the reasons</p> <p>15 why the sublicensing agreements were needed</p> <p>16 for licensees to be able to distribute the</p> <p>17 product in object code format to others?</p> <p>18 A It's one of the reasons, yes.</p> <p>19 Q Okay. And what was the reason for</p> <p>20 the limitation on the use being only in</p> <p>21 conjunction with designated CPU's for such</p> <p>22 software product?</p> <p>23 A Most of the software agreements, as</p> <p>24 I recall, had provisions for designating</p> <p>25 CPU's on which the software could be used,</p>	<p style="text-align: right;">113</p> <p>1 to the meaning of the term "derivative</p> <p>2 works"?</p> <p>3 A Something that was based on the</p> <p>4 licensed product, and that would be</p> <p>5 considered to probably be in a variation of</p> <p>6 the product or would somehow include the</p> <p>7 product or part of the product.</p> <p>8 Q Okay. And when you say include</p> <p>9 part of the product, would you include in the</p> <p>10 meaning of product the ideas, methods and</p> <p>11 concepts of that product?</p> <p>12 A At some point in time, yes.</p> <p>13 Q As of 1985, was that true?</p> <p>14 A Probably, yes.</p> <p>15 Q And the next provision -- the next</p> <p>16 clause of that -- the end of 2.01 says,</p> <p>17 "Provided the resulting materials are treated</p> <p>18 hereunder as part of the original software</p> <p>19 product."</p> <p>20 Let me just break it down. I want</p> <p>21 to ask you about a couple different portions</p> <p>22 of that. First of all, would you agree with</p> <p>23 me that when the 2.01 refers to resulting</p> <p>24 materials, that it's referring to the</p> <p>25 derivative works or modifications that are</p>

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<p style="text-align: right;">130</p> <p>1 MR. ESKOVITZ: I'm trying to</p> <p>2 understand it.</p> <p>3 Q Can you explain how that's</p> <p>4 consistent with your testimony before about</p> <p>5 methods and concepts having been protected</p> <p>6 with respect to definitive works?</p> <p>7 A Well, I think methods and concepts</p> <p>8 is a different subject in that even without</p> <p>9 anybody developing derivative works, there</p> <p>10 could be methods and concepts that could be</p> <p>11 disclosed that at some point would have</p> <p>12 created a breach of the agreement, but as</p> <p>13 time progressed, the idea that there were</p> <p>14 methods and concepts in software that could</p> <p>15 be protected as trade secrets, particularly</p> <p>16 with the UNIX software, became questionable.</p> <p>17 Q I see. So in terms of</p> <p>18 understanding the extent of the derivatives</p> <p>19 and modifications protection, if a licensee</p> <p>20 took the original UNIX code, studied it, and</p> <p>21 created a modification in which it</p> <p>22 paraphrased or copied everything about the</p> <p>23 concepts, the ideas, the structure, the</p> <p>24 organization, the methods from the original</p> <p>25 licensed product but did not copy, literally</p>	<p style="text-align: right;">132</p> <p>1 was changed in the agreement that took it</p> <p>2 out. It was taken out of the IBM agreement</p> <p>3 in the side letter, but eventually, it was</p> <p>4 taken out of the agreement itself, but I'm</p> <p>5 not sure when that happened.</p> <p>6 Q But it wasn't taken out of the</p> <p>7 Sequent agreement that you're looking at</p> <p>8 here?</p> <p>9 A I don't believe so. The language</p> <p>10 is still in the Sequent agreement.</p> <p>11 Q So the derivative or modification</p> <p>12 that we discussed where source code would not</p> <p>13 have been literally copied would have been</p> <p>14 protected under the Sequent agreement?</p> <p>15 MR. KAO: Objection to the form.</p> <p>16 A If it would show you can use</p> <p>17 methods and concepts that were present in the</p> <p>18 original software product, yes.</p> <p>19 Q And not just methods or concepts,</p> <p>20 but also any kind of know-how or structure or</p> <p>21 sequence or organization?</p> <p>22 MR. KAO: Objection to the form.</p> <p>23 A I think that was all included in</p> <p>24 methods and concepts.</p> <p>25 Q Okay. Let me show you the end of</p>
<p style="text-align: right;">131</p> <p>1 copy the source code in the original licensed</p> <p>2 product, is it your view that that would not</p> <p>3 have been covered under the license</p> <p>4 agreement?</p> <p>5 A Again, I would say that depends on</p> <p>6 when that was done.</p> <p>7 Q Okay. As of April 1985 if that was</p> <p>8 done?</p> <p>9 A I think at that time we would have</p> <p>10 considered that that would be a violation of</p> <p>11 the agreement if somebody had done that or</p> <p>12 such -- such a product would have been</p> <p>13 covered by the agreement.</p> <p>14 Q Right. And at what point did that</p> <p>15 kind of a product no longer receive the</p> <p>16 protection of the agreement?</p> <p>17 A I can't -- I can't put down a point</p> <p>18 in time.</p> <p>19 Q Okay. Was it before the middle of</p> <p>20 1986 when you left Greensboro?</p> <p>21 A I can't pin that down.</p> <p>22 Q Do you have any way of identifying</p> <p>23 by reference in documents or anything else</p> <p>24 when that happened?</p> <p>25 A I don't remember when the language</p>	<p style="text-align: right;">133</p> <p>1 Mr. Pfeffer's -- paragraph 6 in his</p> <p>2 declaration where it says, "Accordingly,</p> <p>3 under section 2.01, if a licensee created a</p> <p>4 modification or derivative work based on the</p> <p>5 original licensed product, then the agreement</p> <p>6 treated the resulting work as if it had been</p> <p>7 part of the original software product, and</p> <p>8 any further modifications or derivatives of</p> <p>9 that resulting work would be treated in the</p> <p>10 same manner."</p> <p>11 Do you agree with that statement?</p> <p>12 A No.</p> <p>13 Q What is it that you disagree with</p> <p>14 about that statement?</p> <p>15 A This may have applied earlier when</p> <p>16 we still considered that modification of a</p> <p>17 derivative work would have to include a</p> <p>18 portion of the software product, but when we</p> <p>19 became more aware of the fact that that</p> <p>20 wasn't always the case, then -- so it's</p> <p>21 really not clear with respect to what</p> <p>22 happened over time.</p> <p>23 Q Let me just make sure -- maybe you</p> <p>24 misspoke. I just want to make sure I'm</p> <p>25 clear.</p>

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